IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13402 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARDARSINHJI CHANDRASINHJI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR SAMEER BUNDELA WITH MR HARIN P RAVAL for Petitioner,
MR LR PUJARI AGP for Respondent Nos.1 to 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/02/2007

ORAL JUDGMENT

1. Mr.Sameer Bundela, with Mr.Harin P.Raval, learned counsel for the petitioner and Mr.L.R. Pujari, learned

Assistant Government Pleader for the respondents – State.

2. The petitioner was holding almost about 159 Acres and 26 Gunthas of agricultural land at village Palsani, Taluka Naswadi, District Baroda as on 1/4/1976. In accordance with the provisions of the Gujarat Agricultural Land Ceiling Act, 1972 (Amended), he submitted Form in accordance with Rule 6 of the Gujarat Agricultural Land Ceiling Rules on 13/6/1976, statements of the petitioner were recorded, wherein, he had stated that there were in all five members in his family and the family consisted of petitioner namely Sardarsinhji Chandrasinhji, his wife namely Rajkuvarba, his major son namely Prahladsinh, his minor son and minor daughter namely Digvijaysinh and Jyotikumari, respectively. On 30/5/1978, statements of the petitioner were again recorded and he reiterated his earlier statement that his family consisted of five members only. In Ceiling Case No.14 of 1976, learned Mamlatdar-cumAgricultural Lands Tribunal (“ALT” for short), vide its order dtd.25/26-7-1981 declared 47 Acres and 39 Gunthas land excess and beyond the permissible ceiling limit. The matter was taken up in appeal and the Deputy Collector vide order dtd.12/7/1982, allowed the

Appeal No.20 of 1982 and remanded the matter back to the Mamlatdar and ALT. The original Ceiling Case No.14 of 1976 was renumbered as 18 of 1982. This time, the Mamlatdar-cum-ALT, vide its order dtd.25/10/1982, directed that the excess land was 61 Acres and 25 Gunthas. The matter was again taken in appeal and the Deputy Collector, vide his order dtd.5/4/1983 in Ceiling Appeal No.9 of 1983, again remanded the matter. The said order was challenged before the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/826 of 1984 and the Gujarat Revenue Tribunal was pleased to allow the revision application, vide its order dtd.29/9/1984 and remanded the matter to the learned Mamlatdar-cum-ALT. The Mamlatdar, after the remand, vide his order dtd.24/1/1985, held that the excess land was 51 Acres and 31 Gunthas. The learned Deputy Collector in Ceiling Appeal No.8 of 1985, vide his order dtd.6/9/1985 held that the land was in excess to the extent of 61 Acres and 41 Gunthas. The Gujarat Revenue Tribunal in Revision Application No.TEN/BA/784 of 1985, vide its order dtd.12/9/1988 set aside the order dtd.6/9/1985 passed by the Deputy Collector and confirmed the order passed by the Mamlatdar on 24/1/1985. It, however, remanded the

case to the learned Mamlatdar-cum-ALT to decide the question whether the petitioner was entitled to some more area in view of the fact that the family of the petitioner consisted seven members. After the remand, the matter was again taken up by the learned Mamlatdar-cum-ALT, but, unfortunately, the petitioner did not lead any evidence, nor entered the Witness Box, nor submitted anything to the Mamlatdar that his earlier statements, wherein he had admitted that the family consisted of five members only, were wrong and the matter deserves reconsideration. However, the Mamlatdar, in the said case, which was renumbered as Ceiling (Remand) Case No.1/88/Palsani/Naswadi/14 of 1976, held that 51 Acres and 26 Gunthas land was in excess of the ceiling limit. The Deputy Collector, in Ceiling Appeal No.4 of 1989 confirmed the order on 30/11/1990. On 12/2/1993, Gujarat Revenue Tribunal dismissed the Revision Application No.TEN/BA/182 of 1991 and also rejected the Review Application No.TEN/CA/8 of 1993 vide its order dtd.11/6/1993. Being aggrieved by the orders passed by the Mamlatdar and confirmed by the Deputy Collector and Gujarat Revenue Tribunal, the petitioner is before this Court.

3. The learned counsel for the petitioner, referring to the order dtd.12/9/1988 submitted that once the issue regarding members of the family was decided by the Gujarat Revenue Tribunal, then, the Mamlatdar or any other authority including the Gujarat Revenue Tribunal could not hold that there were only five members in the family. He also submits that they were misled by the observations made by the Gujarat Revenue Tribunal and always thought that the family would be deemed to be of seven members. His submission is that in accordance with sec.6(3)(B) of the Act, the petitioner would be entitled to claim benefit as if the family consisted seven members.

4. Mr.L.R. Pujari, learned Assistant Government Pleader for the respondents - State, on the other hand, submitted that the observations made by the Gujarat Revenue Tribunal, in fact, were not final. The said observations are to be read in the context to mean that the Gujarat Revenue Tribunal was requiring the subordinate authorities to make an inquiry that how many members constituted the family. His submission is that the admissions made by the petitioner on earlier occasion would bind the petitioner and would prove fatal against

his interest, unless the petitioner explains that under what circumstances, such admissions were made. He submits that the authorities were absolutely justified in dismissing the case and cause of the petitioner.

5. After going through the order dtd.12/9/1988, I am unable to hold that the Gujarat Revenue Tribunal finally held that the family consisted of seven members. If such was not a final finding by the Gujarat Revenue Tribunal, then there was no need to remand the matter back to the Mamlatdar. After applying the provisions of sec.6(3)(B) of the Gujarat Land Ceiling Act, the Gujarat Revenue Tribunal itself could calculate the entitlement of the petitioner and could dispose of the matter finally. In fact, the observations are to be seen in the context of the defence and the arguments raised by the petitioner wherein he had been contending that the family consisted of husband, wife, major son and minor son and three daughters. If the earlier admissions excluded two major daughters and the petitioner had been contending that the family consisted of five members only, then, the petitioner would not be allowed to take a somersault and say that the family consisted of seven members. An opportunity was available to the petitioner to explain his

admissions, which, unfortunately, he did not avail and failed in explaining his earlier admissions.

6. So far as the question of remand to the Mamlatdar for leading evidence afresh is concerned, in the opinion of this Court, if the opportunity was available to the petitioner and he did not avail of it, then, it would be adding premium to the lapses of the petitioner by granting any additional opportunity.

7. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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